IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2881 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA.

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

AJITSINH CHANDRASINH GAIKWAD

Versus

STATE OF GUJARAT

Appearance:

MR AJ PATEL for Petitioners

MR MUKESH PATEL ASST. GOVERNMENT PLEADER for Respondent No. 1, 2

CORAM : MR.JUSTICE R.BALIA.

Date of decision: 21/03/97

ORAL JUDGEMENT

1. The petitioners had filed the statement of the holdings for the purposes of Urban Land Ceiling Act which were number as Ceiling Cases Nos. 6260, 6261, 6262, 6263, 6264, 6610 and 8248 of 1988 before the competent officer respondent No.2. As the statements were filed by the members in their personal capacity as well as in respect of their share in the coparcenary property, the

consolidated order was passed in respect of these cases by the competent authority on 21.7.1988, and declared 8415 sqmts. of land as surplus land held by the petitioners. In computing the surplus vacant land held by the petitioners, the competent officer has excluded the land occupied by Talawadi because the land was not constructable for the reason that drainage system was operating in the said area. The petitioner had also raised contentions that the lands over which construction was existing prior to the appointed date along with the land appurtenant thereto, which expression includes so much of area as is considered necessary for beneficial use of building not exceeding 500 sqmts., also cannot be included in computing the vacant lands held by the petitioners for the purposes of computing surplus vacant land. This plea of the petitioners was rejected by the competent officer. The plea was rejected on the ground that constructed building over the land in question cannot be considered to be dwelling units, therefore they were not required to be excluded. However, so far as extent of construction existing on lands in question since before appointed day and land appurtenant thereto is not in dispute as stated in the order of competent officer in respect of fourteen properties.

2. The petitioner aggrieved with the order of the competent officer dated 27.7.1988 appealed before the ULC Tribunal challenging the order to the extent it was against them, to be specific in respect of inclusion of the constructed land and lands appurtenant thereto. However, there was no challenge to the finding about the exclusion of the land through which drainage system was operating and which were held to be not constructable. The appeal of petitioners came to be decided on 28.9.1993. The Tribunal not only rejected the appeal of the petitioners against the finding including the land over which construction was situated along with the land appurtenant thereto the building but also reversed the finding about the exclusion of the land which was found to be unconstructable.

3. Two fold contentions have been raised by the petitioner challenging the impugned orders of the Tribunal and the competent authority. Firstly it has been contended that the competent authority as well as Tribunal both have apparently erred in not excluding the land over which construction was existing even before the appointed day coupled with land appurtenant thereto in view of definition of vacant land under Section 2(q) of the Act. Section 4(9) does not cover the land on which construction was existing or commenced prior to appointed

day. This issue stands concluded by decision of the Supreme Court in Smt. Meera Gupta v. State of West Bengal and others reported in AIR 1992 SC 1567.

4. This position is not seriously disputed and rightly so. The question that has arisen before the Supreme Court in Meera Gupta's case was whether all the lands on which buildings are construction whether existing prior to the commencement of the Act or the appointed day or the commencement of construction has taken place after the appointed day are to be included in computation of vacant land to be taken into account in calculating the extent of vacant land held by such person under Section 4(9) of the Act or the operation of Section 4(9) is confined to such lands over which construction of building with a dwelling unit had begun after the appointed day. The Court after considering the various provisions of the Act including definition of vacant land under Section 2(q) and the provisions of Section 4(9) came to conclusion that the area where there are building regulations and that the land which is occupied by any building which has been constructed before or is being constructed on the appointed day with the approval of appropriate authority is excluded from the definition of vacant land under Section 2(q). Therefore, section 4(9) cannot be read in a manner to again include the land which has been excluded from the definition of vacant land through interpretational instrument which may result in accusing finger to Legislature to have indulged in contradictory or futility in giving the same with one hand and taking it away with the other. The court confined the operation of Section 4(9) by interpreting the term `any other land' as opposed to `vacant land' in a manner so as it does not render otiose the definitional exclusion under Section 2(q). The Court concluded:

> "Though this provision is not happily worded, yet when meaningfully construed in the context, it means that a building which gets excluded by virtue of the definition of `vacant land' gets clothed with the protective cloak for not being reckoned again as any other land, over which there is a building with a dwelling unit therein. Sub-section (1) of Section 4 means to convey that what is not vacant land under sub-clauses (ii) and (iii) of clause (q) of Section 2 cannot go to add up as `vacant land' under subsection (9) of Section 4 by descriptive overlapping. If we wipe out the distinction of `vacant land' and `any other land' as demonstrated in sub-section (9) of Section 4, we strangulate and destroy the spirit

> and lifeblood of the `appointed day' and the gap period. We would loathe giving such a construction and would rather opt for a construction which carries out the objectives of the Act, primary of which is to fix a ceiling limit on the holding of vacant lands, conditioned as they are on the appointed day, and as held on the date of the commencement of the Act.
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> When we import this understanding to sub-section (9) of Section 4, two different results discernibly follow, based on the commencement of the construction. If the construction of a building with a dwelling unit therein had begun after the appointed day, then it is all the same `any other land' to be reckoned for calculating the extent of vacant held by a person. And if the construction of a building with a dwelling unit therein on land had been completed or was in progress by and on the appointed day, then it is not `any other land' to be reckoned for calculating the extent of vacant land held by a person. This is the interpretation which commends to us of sub-section (9) of Section 4 as also of sub-section (11) of Section 4 and the definitive expressions used therein as explained and highlighted earlier"

Accordingly it must be held that the order of the competent officer as well as the Tribunal suffer from the error apparent on the face of record to the extent it includes land over which construction was existing before the appointed day and land appurtenant thereto in computing the vacant land held by the petitioners and declaring the surplus vacant land on that basis.

5. The another contention of the learned counsel for the petitioner concerns the reversal of the finding about the exclusion of land which was subject to laying of drainage and not constructable by the competent authority. Firstly it was urged that in an appeal against the order of the competent officer by the petitioners in which only findings against the petitioners had been challenged, the Tribunal had no jurisdiction to reverse the findings in favour of the appellants without therebeing any counter appeal, by the State. It was alternatively urged that in any case even it is assumed that such power vest in the Tribunal to reverse a finding in favour of the appellant which is not subjected to challenge suo motu then such power could not have been exercised without affording an opportunity of

hearing by giving notice to the petitioners about such intention of the appellate authority to reverse the finding in its favour.

6. This contention in my opinion can be decided on the premise that even assuming for the present purposes that in an appeal filed by the holders of the land, the Tribunal in given circumstances can reverse the finding in its favour, without examining the issue on merit, it cannot be doubted that before recourse to this direction can be taken, notice of such intended revision of the finding is required to be given to the appellant. Mere notice of date of hearing cannot be considered to be notice of the intended exercise of power by the appellate Tribunal to reverse a finding in favour of the appellant against which there is no appeal, as contended by learned counsel for the respondent. Section 33 under which the Tribunal exercised its jurisdiction in appeal to pass any order which it deems fit requires that any order which it deems fit can be passed only after giving an opportunity of hearing to the appellant. Notice of hearing of appeal can at best be treated an opportunity of hearing to the appellant in support of his appeal. It cannot be said to be a notice of enquiry into any other matter which is not subject of appeal but which Tribunal suo motu intends to take into account before passing the order in appeal. Exercise of power to reverse a final order in favour of the appellant without affording an opportunity of hearing would be violative of fundamental norm of adjudication of any dispute. No such opportunity appears to have been given in the present case. The only contention learned counsel for the State had been that since notice of hearing appeal was given to the appellant, he must be deemed to have notice of the Tribunal's power to pass any order as it deems fit and he was not further required to be apprised of the Tribunal's intention to reverse the finding which has not been appealed against. He further contends that it appears that appellants did not appear on the date of hearing and by not appearing at the time of hearing, appellant himself was responsible inasmuch as had he appeared, during the course of hearing the appellant could have been apprised about such reversal of finding.

6. I am unable to sustain this contention of the learned A.G.P. Apart from the fact that it is not very clear from the order itself that the appellants were not present, inasmuch while the impugned order in its title shows the presence of the counsel for the appellants in the body of the order it has been noticed by the Tribunal that inspite of several opportunities the counsel for the

appellant has not urged anything orally and in writing and thereafter has decided to consider the contentions raised by the appellant. At best this statement of the fact in the order can be read to mean that any additional ground other than what has been raised in appeal has not been urged before the Tribunal. The order does not speak anywhere whether during the course of hearing, if the appellant's counsel were present, their attention was invited to the alleged error in the finding regarding exclusion of land which was subject to the laying of drainage. If they were not present, as urged by learned counsel for the respondent any show cause notice inviting answer to Tribunal's intention to reverse the finding in its favour was never given to the appellants. When the appeal was fixed for hearing and order was made by Tribunal the issue raised by the appellants was already decided by Supreme Court in favour of appellants. As per decision of this Court, the Tribunal was under an obligation to decide appeal on merits. In such situation an appellant, whose legal contention raised in appeal are concluded by decision of Supreme Court and there is no challenge to facts, an appellant can legitimately expect the Tribunal to decide questions raised in his appeal in accordance with law laid down by Supreme Court without his presence and cannot be blamed for his non appearance for that reason alone inviting reversal of findings in his favour without any inclination to suo motu exercise of power by the appellate authority to reverse finding in favour of appellant cannot be justified.

7. It may be noticed that under Section 34 of the Act, the power has been reserved with the State to revise such order against which no appeal lie. If the finding against the State in the land ceiling proceedings are not appealable at the behest of the State, then, obviously, revisional jurisdiction in that regard lies with the State. If the finding was appealable, then, it was for the aggrieved party, in this case, State, to have filed the appeal, if there was no other impediment for the State to have filed the appeal. Taking the case as if the appeal was maintainable at the behest of the State and the State has not chosen to file an appeal, it becomes highly doubtful whether the Tribunal could have reversed a finding against which appeal could have been filed before it. If the order to that extent was not appealable by any of the parties, then it becomes very doubtful whether in respect of finding which could not be subjected to appeal at all, Tribunal exercising appellate jurisdiction could have examined that finding as a revisional authority. The power to make any order as the appellate authority cannot extend to a question in

respect of which appeal in a given case was not maintainable. Ordinarily appellate body could have examined only those aspects of the matter and those issues which could have been made the subject matter of appeal. Howsoever wide the power to make any orders as it thinks fit may be constituted, the power cannot go beyond the limit of the scope within which appeal could have been filed. Be that as it may, as I have come to the conclusion, that the finding in favour of the appeal had been raised without affording an opportunity of hearing the order to that extent made by the Tribunal cannot be sustained.

8. In that view of the matter, the orders of the Tribunal as well as the orders of the competent Authority both are quashed and set aside. It will be open for the competent officer to make fresh orders in accordance with law. Rule made absolute with no order as to costs.